

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

**PETITION FOR RECONSIDERATION  
CLARITY TELECOM, LLC DBA VAST BROADBAND**

Clarity Telecom, LLC dba Vast Broadband (“Clarity” or the “Company”), pursuant to Section 1.429 of the rules and regulations of the Federal Communications Commission (“FCC” or “Commission”) hereby seeks reconsideration of the FCC’s March 23, 2018 Report and Order, wherein the FCC provides additional support to fund model-based broadband deployment.<sup>1</sup> Clarity applauds the Commission for taking such an important step to increase funding for rural broadband deployment, and acknowledges the positive impact that the additional \$36.5 million in Alternative Connect America Model (“A-CAM”) funding will have on rural and remote communities nationwide. However, Clarity urges the FCC to reconsider its decision in one very specific and limited matter: making a minor increase in the amount of additional A-CAM support to provide funding for the locations which were precluded from receiving support due to an

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<sup>1</sup> See *Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking*, WC Docket Nos. 10-90, 14-58, 07-135, CC Docket No. 01-92 (rel. March 23, 2018), FCC 18-29 (“2018 USF Orders” and “USF NPRM”).

inadvertent clerical error. At the very least, the Commission should seek comment on including these abandoned locations in the *USF NPRM* as it considers additional A-CAM funding opportunities.

## **I. Introduction**

Clarity provides service in South Dakota and accepted A-CAM support. Clarity's ILEC operations are extremely rural in nature spanning over 980 square miles and including nine exchanges over four counties in southeastern South Dakota. Clarity has approximately 2.5 or fewer access lines per square mile in its unserved and underserved areas, where it has yet to extend 10/1 Mbps or greater broadband service.

Clarity was shut out of a large portion of the A-CAM funding that it was initially eligible for, prior to the final offer to rate-of-return ILECs on August 3, 2016,<sup>2</sup> due to an inadvertent clerical error with its June 2015 Form 477 data. Clarity strives for accuracy in all that it does. In preparation for its March 1, 2016 Form 477 filing, Clarity discovered that it had not reported all of the census blocks where the company offers broadband. Clarity revised its June 2015 Form 477 data to include the additional census blocks that the Company had omitted in its initial filing. However, due to an inadvertent error, the revised filing incorrectly identified the technology as cable modem (code 42) in certain of the newly added census blocks rather than DSL (code 10). This inadvertent error did not become apparent until after the release of A-CAM v.2.3 when the revised June 2015 Form 477 data "knocked out" support due to the inclusion of the census blocks which had been erroneously indicated as offering cable modem support. Clarity filed a second revision on September 1, 2016, and filed a petition for waiver of the deadline to submit

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<sup>2</sup> See *Wireline Competition Bureau Announces Support Amounts Offered to Rate-of-Return Carriers to Expand Rural Broadband*, WC Docket No. 10-90 (rel. August 3, 2016), DA 16-869, ("A-CAM Offer Public Notice").

Form 477 revisions.<sup>3</sup> The FCC, however, denied its petition.<sup>4</sup> Subsequently, Clarity conducted *ex parte* meetings with FCC staff urging the Commission to provide funding for these locations as well as locations served by other carriers which received no funding due to clerical errors.<sup>5</sup> Clarity estimates that due to the denial of its waiver, the 2,167 locations that were excluded from funding should have received approximately \$1.83 million per year based upon the revised offer made to the Company. When the funding made available in the *2018 USF Orders* is taken into account, which allows funding to be at the \$146.10 capped level, the resulting amount is approximately \$2.15 million per year.

Accordingly, the facts and arguments regarding the need to provide funding for these abandoned locations have been previously submitted to the Commission and, as demonstrated by statements made in the *ex parte* meetings, were not rejected.<sup>6</sup> By granting this petition, the FCC can rectify the omission it made in the *2018 USF Orders* and *USF NPRM* in not including funding for these locations.

## **II. The 2018 USF Orders Should be Modified to Allow for Inclusion of Funding for the Locations that Were Excluded Due to the Inadvertent Clerical Error**

Granting this Petition advances the public interest by enabling an additional 2,167 locations in rural South Dakota to receive broadband. As set forth in the *2018 USF Orders*, the Commission will offer additional A-CAM funding up to \$146.10 per location to all carriers that

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<sup>3</sup> See *Petition of Clarity Telecom LLC dba Vast Broadband for Waiver of Deadline to Submit Form 477 Revisions*, WC Docket Nos. 10-90 & 14-58, CC Docket No. 01-92 (filed Sept. 8, 2016). A map showing the census blocks excluded from funding due to the inadvertent error is attached.

<sup>4</sup> See *Order*, WC Docket No. 10-90, (rel. Oct. 20, 2016), DA 16-1204 at ¶ 7.

<sup>5</sup> See Letter from Larry D. Thompson, Vantage Point Solutions, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed April 21, 2017); Letter from Dustin Johnson, Vantage Point Solutions, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 90 (filed June 15, 2017) (“June 15, 2017 *ex parte* letter”); Letter from Larry Thompson, Vantage Point Solutions, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 (filed June 29, 2017).

<sup>6</sup> See June 15, 2017 *ex parte* letter. In the meeting, Commission staff indicated a willingness to provide the funding if new opportunities for funding were to become available.

accepted the revised offer for their ten-year support term. Taking this action will “shift” locations that are currently funded at the 4/1 or reasonable request level to receive broadband at 10/1 or 25/3. Specifically, the FCC estimates that by increasing the per-location cap to a uniform \$146.10, the number of additional locations that will receive 25/3 Mbps broadband over ten (10) years could be more than 17,700 with another 14,000 locations receiving 10/1 Mbps.<sup>7</sup> In order to “shift” these locations to receive higher broadband speeds, the FCC will add \$36.5 million to the A-CAM budget.

Clarity intends to accept this offer and is already adjusting its buildout schedule to ensure that the affected locations in its funded census blocks receive the higher speeds as promptly as possible. However, the 2,167 locations eliminated from funding previously will not be eligible for the additional funding. On the contrary, absent grant of this Petition, these locations will continue to be excluded from any high-cost universal service support. Accordingly, any increase in A-CAM funding should actually go first to these locations so that these individuals would at least receive the same level of broadband offered to all other locations whose carriers accepted the revised offer. As that did not occur in the *2018 USF Orders*, the FCC should reconsider its decision and include an additional \$2.15 million to the \$36.5 million that it has made available for the ten-year period.<sup>8</sup>

Such a minor increase is already supported in the record. In its *2018 USF Orders*, the FCC cites the “ample support in the record from carriers and state government officials, as well as from members of Congress” for increasing the A-CAM budget.<sup>9</sup> This support was provided in

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<sup>7</sup> See *2018 USF Order* at ¶ 67.

<sup>8</sup> While this petition seeks that the additional funding allocated to A-CAM be increased to \$38.65 million per year for the ten-year term, some carriers may choose to not accept the offer. Accordingly, the result of granting this petition may result in an additional funding which is lower than this amount.

<sup>9</sup> See *2018 USF Order* at ¶ 66.



the context of the additional \$110 million which the FCC estimated that it would need to increase the overall high-cost budget if all carriers electing the A-CAM offer were “fully funded” using the \$200 per location funding cap.<sup>10</sup> The expectation that a relatively small investment in USF support can yield thousands of new broadband subscribers is clearly understood by the FCC and a myriad of stakeholders who encouraged the FCC to provide additional funding for A-CAM companies, and the same widely-supported expectation should be applied to Clarity’s very specific situation as well. If the FCC agreed to provide additional funding for all A-CAM recipients so that more funded locations could receive 10/1 or even 25/3 Mbps broadband, why wouldn’t it follow that the FCC should provide additional funding for Clarity to ensure that its 2,167 unfunded rural locations can receive broadband? There is a well-documented record in the proceeding leading up to the *2018 USF Orders* that increasing A-CAM funding will help achieve the intent of the FCC, Congress and the Presidential Administration to increase rural broadband deployment and stimulate rural economies. Clarity urges the FCC to apply the same rationale to these abandoned locations.

For reasons described herein, Clarity respectfully requests that the FCC reconsider its decision and include a minor increase in A-CAM funding to allow for inclusion of its abandoned locations.

### **III. At the Very Least, the FCC Should Seek Comment on Including Funding for the Locations in its NPRM**

If the FCC decides not to reconsider the level of additional funding, at the very least the Commission should reconsider the proposals regarding additional A-CAM on which it seeks comment in the *USF NPRM*. The FCC should seek comment on adding \$2.15 million over ten (10) years for the 2,167 locations in Clarity’s service area that were denied funding.

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<sup>10</sup> *Id.* at ¶ 65.

Specifically, funding these locations should be included in proposals that consider a new A-CAM offer for glidepath and/or for non-glidepath carriers. Clarity has rural customers who need broadband, and the Company believes that the A-CAM is the most efficient and reliable way to ensure that their most rural customers are not left behind in the digital divide.

In the *USF NPRM*, the FCC asks a number of questions about extending a new model offer, including which carriers should be eligible to participate. In seeking comment on whether to extend a new model offer, the FCC proposes to “update the broadband coverage data with the most recent publicly available FCC Form 477 data prior to any additional offer of support.”<sup>11</sup> Should the FCC proceed with extending a new model offer based on the most recent FCC Form 477 data, it will find that Clarity would be eligible for considerably more funding in these 246 census blocks, due to the fact that it corrected the clerical error that prevented it from obtaining the amount of A-CAM support it should have received. The rural missing locations that would have been funded have not been served with 10/1 Mbps or greater broadband in the interim. Further, Clarity does not agree with the FCC’s proposal to limit the new model offer to legacy carriers only. Clarity urges the Commission to develop a mechanism for it to receive A-CAM support for the locations left behind due to its clerical error in the future, if a new offer is released.

Further, the FCC seeks comment on “using additional headroom in the budget to offer the carriers that accepted the revised offer of A-CAM support in 2017 the fully funded amount, using a per-location funding cap of \$200 per location.”<sup>12</sup> Clarity points out the Commission’s acknowledgement of “additional headroom in the budget” and believes that if the FCC develops a mechanism for the Company to receive funding for the abandoned locations, such funding will

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<sup>11</sup> See *USF NPRM* at ¶ 123.

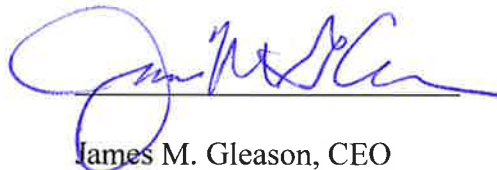
<sup>12</sup> See *USF NPRM* at ¶ 143.

not have a negative impact on the overall budget for this additional funding, which the FCC anticipates could be \$66.6 million per year for the ten-year term.<sup>13</sup>

#### **IV. Conclusion**

As demonstrated herein, the public interest would be advanced by the FCC immediately increasing the \$36.5 million annual amount that it has made available for the ten-year period to include \$2.15 million per year to fund the 2,167 locations that receive no A-CAM or legacy support due to an inadvertent clerical error. At the very least, in the preliminary stages of developing an ongoing path forward with the A-CAM via additional funding, the FCC should include a mechanism for Clarity to receive funding at \$146.10 per location for locations that were previously eliminated due to clerical errors in the Form 477. It is clear that the budget can be made to accommodate for funding these locations, and the ultimate goal of increasing rural broadband deployment is in the public interest and widely supported.

Respectfully Submitted,



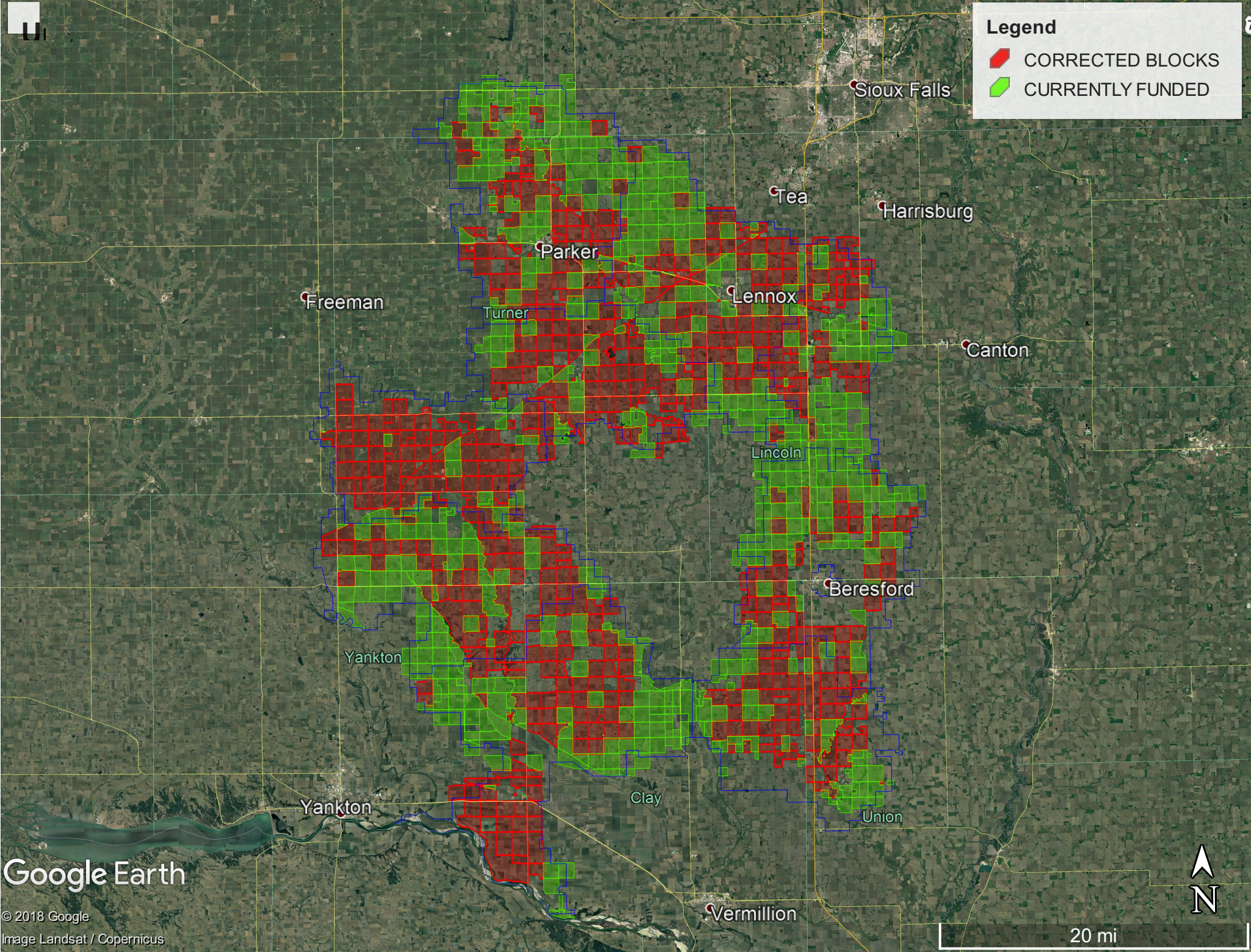
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May 10, 2018

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<sup>13</sup> *Id.* As indicated in paragraph 143, if the Commission moves forward with the additional offer using a per-location funding cap of \$200, carriers could voluntarily elect to take the offer. If such an offer is made to A-CAM electors for this type of additional funding, the funding that Clarity seeks in this petition should not be conditioned upon whether Clarity accepts such an offer or any other type of offers the Commission may make to A-CAM electors.





# Legend

- CORRECTED BLOCKS
- CURRENTLY FUNDED

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20 mi